

## PUBLIC SAFETY DEPARTMENT[661]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 101.5, the State Fire Marshal hereby amends Chapter 221, "Flammable and Combustible Liquids," Iowa Administrative Code.

This amendment deals solely with one of the conditions under which blends of biodiesel may be dispensed legally. Recent rule making was completed which addressed this issue; the rules were Adopted and Filed Emergency After Notice and published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 7977B**. Included in that action was a provision that allows for the dispensing of biodiesel blends if "[t]he dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend." The difficulty with this provision is that no independent testing laboratory, to the knowledge of the State Fire Marshal, has yet finalized a protocol for testing dispensers for compatibility with biodiesel blends, which is a precondition to submission of a dispenser to a laboratory. The State Fire Marshal finds that the adoption of a provision with which it is impossible to comply constitutes a ministerial error; the amendment adopted herein corrects that error by striking the words "The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and," which will enable compliance with the provision.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because the amendment is necessitated by a ministerial error made in the adoption of language with which is impractical to comply. The adoption was effective on July 2, 2009, and had been the subject of a public comment period, during which extensive comments were received, which terminated on June 9, 2009.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the State Fire Marshal further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective September 1, 2009. The public will benefit from the avoidance of confusion and uncertainty that would be occasioned by retaining language with which it is impractical to comply.

This amendment is intended to implement Iowa Code section 101.1.

This amendment became effective September 1, 2009.

The following amendment is adopted.

Amend subrule 221.4(2) as follows:

**221.4(2)** Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

"*B-blend*" means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including no more than 20 percent biodiesel, as defined in Iowa Code section 214A.1.

"*E-10*" means a blend of petroleum and ethanol including no more than 15 percent ethanol intended for use as a motor vehicle fuel.

"*E-blend*" means a blend of petroleum and ethanol including more than 15 percent ethanol intended for use as a motor vehicle fuel.

2206.7.1.1.2 E-blend may only be dispensed if (a) or (b) applies:

(a) Only a dispenser listed by an independent testing laboratory as compatible with E-10 gasoline shall be used to dispense E-blend, and the retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure. The dealer shall maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(b) The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. In addition, the retail dealer shall install an under-dispenser containment system with electronic monitoring.

2206.7.1.1.3 B-blend may only be dispensed if (a) and either (b), (c), or (d) apply:

(a) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

(b) The retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(c) The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the retail dealer has installed an under-dispenser containment system with electronic monitoring.

(d) ~~The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and information~~ Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

NOTE: If ~~options~~ option (b) or (d) ~~are~~ is used, under-dispenser containment shall be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.